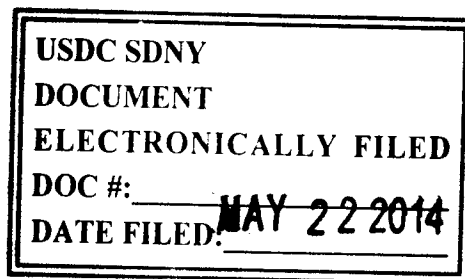


Forrest, K.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



_____	x	
In re ALUMINUM WAREHOUSING	:	No. 13 MD 2481 (KBF)
ANTITRUST LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	STIPULATION AND [ <del>PROPOSED</del> ] ORDER
	:	REGARDING DISCOVERY RELATED TO
ALL ACTIONS.	:	TESTIFYING EXPERTS
	:	
_____	x	

Plaintiffs and Defendants (collectively, "Parties") in MDL 2481 stipulate and agree as to discovery related to testifying experts in this litigation as follows:

1. This Stipulation and Order shall govern discovery related to testifying experts in this litigation. The Parties agree that there shall be no disclosures with respect to consulting experts. To the extent that this Stipulation and Order imposes limitations on discovery that would otherwise be available pursuant to the Federal Rules of Civil Procedure, the Parties agree to such limitations on discovery. Neither the terms of this Stipulation and Order nor the Parties' agreement to them implies that any of the information exempted from discovery in this Stipulation and Order would otherwise be discoverable.

2. Each Party shall make all disclosures required by Rule 26(a)(2)(A) and (B)(i), (iii), (iv), (v), and (vi) of the Federal Rules of Civil Procedure, as modified by this Stipulation and Order, and shall disclose the facts or data relied upon by the witness in forming his or her opinion, at the times provided in the Court's February 6, 2014 Scheduling Order (or as provided in any subsequent scheduling order issued by the Court) for the service of written expert reports. To the extent that the disclosures describe or include exhibits, information or data processed or modeled by computer at the direction of a disclosed expert in the course of forming the expert's opinions, machine readable copies of the final data (including all input and output files) along with the appropriate computer program and instructions shall be produced to all Parties. If data used by an expert witness is derived from electronic data produced by any Party to this litigation, a list of the data utilized by the expert shall be produced in a format sufficient to allow all Parties to identify and access such data and replicate the data set used by the expert. If for any reason a Party or its expert is unable to identify and access the data utilized by the producing expert, copies of that original electronic data in machine readable format shall be produced, together with any programs and instructions necessary

to access and use the data. No Party need produce computer programs that are reasonably and readily commercially available. All electronic data, together with programs and instructions, shall be made available within three (3) days of the disclosure of the expert witness's report to all Parties. Copies of the electronic data together with any programs and instructions, and all other materials required to be produced, shall be delivered by hand, overnight express, or electronic means (*e.g.*, FTP) to: (i) counsel for each Defendant (one copy per Defendant or group of Defendants represented by the same counsel); (ii) counsel for each Plaintiff class or proposed Plaintiff class (one copy per Plaintiff class or proposed Plaintiff class); and (iii) counsel for each opt-out Plaintiff (one copy per opt-out Plaintiff or group of opt-out Plaintiffs represented by the same counsel).

3. The following categories of data, information, documents or materials need not be produced by any Party, and are not subject to discovery in this matter, including at deposition or trial:

(a) drafts of expert witness's reports, opinions, written testimony or work papers prepared for this litigation; preliminary calculations, computations, modeling or data runs prepared in connection with this litigation; or other preliminary or draft materials prepared by, for or at the direction of an expert witness; but any facts, data or information upon which the expert witness relies in rendering his or her expert opinion(s) in this litigation, or which form the basis of summaries or tables of information relied on by the expert in rendering the expert witness's opinion(s) in this litigation (*e.g.*, surveys and instructions for surveys) shall be produced and subject to discovery;

(b) any notes taken or other writings prepared by or for an expert witness in connection with this litigation, including correspondence or memos to or from, and notes of conversations with the expert's assistants and/or clerical or support staff, other expert witnesses or non-testifying expert consultants, or attorneys for the Party offering the testimony of such expert

witness, unless the expert witness relied on those notes or other writing in rendering the expert witness's opinion(s) in this litigation; and

(c) any written correspondence between an expert witness retained for this litigation and the expert witness's assistants and/or clerical or support staff, other expert witnesses or non-testifying expert consultants, or attorneys for the Party offering the testimony of such expert witness, except that facts, data or information, or assumptions, that the Party's attorney provided and that the expert relied on in rendering the expert witness's opinion(s) in this litigation shall be provided. Written engagement letters between a testifying expert retained for this litigation and attorneys for the Party offering the testimony of such expert witness are not exempted from discovery and must be produced.

4. For avoidance of doubt, notwithstanding the Federal Rules of Civil Procedure, the following types of information shall not be the subject of discovery, except to the extent that an expert relied upon it in forming opinions to which the expert may testify: communications, written or otherwise, among and between (i) counsel and the expert and/or the expert's staff and/or supporting firms; (ii) counsel and any non-testifying expert consultant and/or the consultant's staff; (iii) the expert and other experts and/or other non-testifying expert consultants; (iv) experts and their staff and/or supporting firms; (v) non-testifying expert consultants and their staffs; (vi) the respective staffs and/or supporting firms of experts or non-testifying expert consultants and the staffs and/or supporting firms of other experts or non-testifying expert consultants.

5. Notwithstanding any other provision in this Stipulation and Order, this Stipulation and Order does not preclude or limit discovery regarding expert work, data, calculations, or other material filed with or otherwise submitted to the Court outside of written expert reports, without regard to whether such material was prepared by testifying or consulting experts.

6. This Stipulation and Order should not be construed to preclude reasonable questions at deposition going to the expert witness's compensation, or to the number of hours expended in preparing his or her report and testimony, or to any facts or assumptions provided by a Party and relied upon by that expert witness, or to the frequency and duration of meetings with counsel in connection with this litigation.

7. Any Party proffering the testimony of an expert witness in this litigation shall make reasonable efforts to produce the contact information for the attorneys or other individuals who have copies of that witness's trial and deposition testimony, along with the witness's written opinions, for each case in which the witness has testified as an expert at trial or by deposition within the preceding four years. Subject to obtaining any other required consents, any Party proffering the testimony of an expert witness in this litigation who also proffered that person's testimony as an expert witness in a prior matter shall not unreasonably withhold its consent to the production in this litigation of the testimony or opinions from such expert that it proffered in the prior matter.

DATED: May \_\_\_\_, 2014

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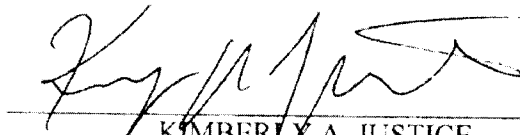
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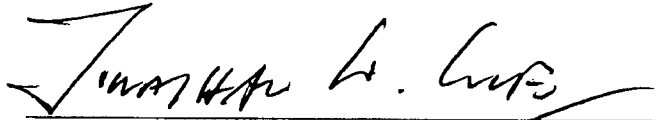
  
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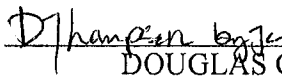
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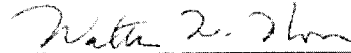
  
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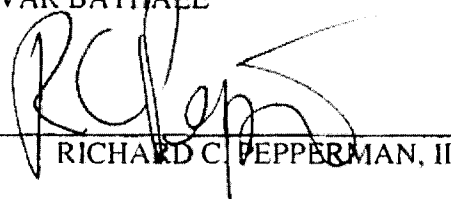
  
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Attorneys for Defendant Glencore Ltd.

IT IS SO ORDERED.

DATED: 5/22/14



THE HONORABLE KATHERINE B. FORREST  
UNITED STATES DISTRICT JUDGE

*km*